

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MARY C. SMITH)	
Claimant)	
VS.)	
)	
LEE AEROSPACE, INC.)	Docket No. 1,000,636
Respondent)	
AND)	
)	
ROYAL & SUNALLIANCE)	
Insurance Carrier)	

MARY C. SMITH)	
Claimant)	
VS.)	
)	
O'REILLY AUTOMOTIVE, INC.)	Docket No. 1,004,709
Respondent)	
AND)	
)	
CNA AND)	
ZURICH NORTH AMERICA)	
Insurance Carriers ¹)	

ORDER

The respondent Lee Aerospace, Inc., and its insurance carrier Royal & SunAlliance Insurance Company requested Appeals Board (Board) review of the October 24, 2002 preliminary hearing Order entered by Administrative Law Judge (ALJ) John D. Clark.

¹ P.H. Trans. at 4. However, the Division of Workers Compensation's records indicate the insurance carrier is Universal Underwriters.

ISSUES

The two above captioned cases were consolidated for hearing and trial purposes. In Docket No. 1,006,636, claimant alleges she injured her left arm at work on October 12, 2001 while employed by Lee Aerospace.² Thereafter, in Docket No. 1,004,709, claimant alleged she injured her left arm at work with O'Reilly's on "11-12-01 and each and every day worked thereafter."³

On August 20, 2002, Judge Clark issued a preliminary hearing Order authorizing Dr. Richard S. Piazza as claimant's treating physician and assigning the cost of preliminary benefits against Lee Aerospace, Inc., and its insurance carrier. That Order was appealed and the Board issued its Order affirming Judge Clark's decision on January 29, 2003.

Following another preliminary hearing on October 24, 2002, Judge Clark again, found claimant's current condition to be a direct and natural result of the original injury. Liability for preliminary hearing benefits were again assessed against respondent Lee Aerospace, Inc., and its insurance carrier. In this appeal from that October 24, 2002, Order, the record remains the same as when this matter was before the Board on review of Judge Clark's August 20, 2002, Order, with the only exception being the addition of the September 13, 2002, deposition of Dr. Piazza.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record compiled to date, the Board again finds Judge Clark's preliminary determination that claimant's injury arose out of and in the course of her employment with Lee Aerospace, Inc., should be affirmed. The Board does so for the same reasons set out in its prior Order dated January 29, 2003. There is no need to repeat those findings and conclusions and, therefore, the findings and conclusions in its Order dated January 29, 2003 are adopted as if they were specifically set forth herein. As stated therein, the Board finds that claimant's work activities, while employed at O'Reilly Automotive did not permanently aggravate nor worsen claimant's injuries. The Board further finds that claimant's current need for medical treatment for her left upper extremity, left shoulder and neck injuries is a direct and natural consequence of her October 12, 2001, accident at Lee Aerospace, Inc.

² K-WC-E-1 Application for Hearing filed Nov. 26, 2001.

³ K-WC-E-1 Application for Hearing filed June 25, 2002.

AWARD

Wherefore, the Board affirms the October 24, 2002 Order entered by Administrative Law Judge John D. Clark.

IT IS SO ORDERED.

Dated this _____ day of February 2003.

BOARD MEMBER

c: W. Walter Craig, Attorney for Claimant
Kurt Ratzlaff, Attorney for O'Reilly Automotive, Inc. & Zurich North America, Inc.
P. Kelly Donley, Attorney for O'Reilly Automotive, Inc., and CNA
Terry J. Torline, Attorney for Lee Aerospace, Inc. and Royal SunAlliance Ins. Co.
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation